

## CHAPTER 80-1-4

### INVESTMENT SECURITIES

80-1-4-.01	Permissible Investments and Limitations.	80-1-4-.03	Accounting and Record Keeping for Investments.
80-1-4-.02	Securities Underwriting.	80-1-4-.04	Custody and Safekeeping.

#### **80-1-4-.01 Permissible Investments and Limitations.**

Subject to such further restrictions and approvals as its board of directors may set forth in its investment policy, a bank may purchase, sell, and hold securities, as set forth in the following:

##### (1) Debt Obligations

(a) Obligations of the United States Government or Agencies of the United States Government.

The following may be held without limitation:

1. Securities issued by the United States government or an agency of the United States government;
2. Securities guaranteed as to principal and interest by the United States government or an agency of the United States government;
3. Securities issued under the U.S. Treasury's Separate Trading of Registered Interest and Principal (STRIP's) program, which are offered in book entry form and which are direct obligations of the U.S. Government, as authorized by Subtitle III, Chapter 31 of Title 31 U.S.C.; and
4. Securities which are pre-refunded, with the redemption proceeds invested in securities issued by the United States Government or an Agency of the United States Government.

(b) Obligations of a State or Territorial Government of the United States or Agencies of State or Territorial Governments.

The following may be held without limitation:

1. General obligations of any state or territorial government of the United States or any agency of such governments;
2. Securities guaranteed as to principal and interest by such state or territorial governments or any agency thereof; and
3. Securities which are pre-refunded, with the redemption proceeds invested in securities issued by state or territorial governments or agencies thereof.

(c) Obligations of other Political Subdivisions.

1. The general obligations of a single obligor domiciled within the United States which is authorized to levy taxes may be held in an amount up to twenty-five (25) percent of a bank's statutory capital base. This percentage limitation shall not apply where the statutory capital base is at least \$10,000,000.

2. Securities which are secured by a pledge or assignment of tax receipts sufficient to pay the principal and interest of such securities as they become due may be held in an amount up to twenty-five (25) percent of the bank's statutory capital base. This percentage limitation shall not apply where the statutory capital base is at least \$10,000,000.

3. Revenue obligations of a political subdivision authorized to establish utility fees, public transportation usage fees or public use fees where such levies or fees are pledged to and are sufficient to pay the principal and interest of the securities as they become due may be held in an amount up to twenty-five (25) percent of a bank's statutory capital base. This percentage limitation shall not apply where the statutory capital base is at least \$10,000,000.

4. In those instances where the repayment of revenue obligations is dependent upon rentals or other fees payable to a political subdivision by a non-governmental unit, such as in the case of industrial revenue bonds, the obligor shall be deemed to be the non-governmental unit responsible for the payment of such rentals or other fees and any guarantor of such payments. Investment in such securities is limited to fifteen (15) percent of the bank's statutory capital base.

5. Securities issued by political subdivisions rated in the four highest rating categories by a nationally recognized rating service may be held in an amount up to fifteen (15) percent of a bank's statutory capital base.

(d) Corporate Debt Securities.

Corporate debt securities may be purchased which are:

1. Rated in the four highest rating categories by a nationally recognized rating service;
2. Readily salable in an established market with reasonable promptness at a price which corresponds to its fair value;
3. Denominated in U.S. dollars; and
4. With respect to banks having a statutory capital of less than \$20,000,000, such securities must mature within 15 years.

A bank's investment in corporate debt securities is limited to fifteen (15) percent of the bank's statutory capital base per obligor. A bank's aggregate investment in corporate debt securities shall not exceed one hundred (100) percent of the bank's statutory capital base.

(e) Debt Securities Taken in Conformity with Lending Policies.

Debt obligations shall not be considered investments within the meaning of this regulation where they:

1. Are taken in conformity with the bank's lending policies;
2. Are included in determining the outstanding credit for purposes of ascertaining compliance with the bank's secured and unsecured loan limitations in Code Section 7-1-285; and
3. With respect only to banks having a statutory capital base of less than \$20,000,000, mature within 15 years, and are treated by the bank in all other respects as loans.

The debt obligations that qualify for this exception must be combined with other investment securities or other obligations to the same entity. This aggregation must not exceed the twenty-five (25) percent limitation on obligations to any one person in Code Section 7-1-285.

(2) Equity Securities.

Except as allowed by Code Section 7-1-288 or in this regulation, a bank may not engage in any transaction with respect to shares of stock or other capital securities of any corporation.

(3) Investment Funds.

A state chartered bank may invest up to fifteen (15) percent of its statutory capital base in securities of, or other interests in, any open-end or closed-end management type investment fund or investment trust which is registered under the Investment Company Act of 1940, subject to the following additional conditions.

(a) The investment portfolio of such investment fund or investment trust shall be limited to those securities in which banks or trust companies are permitted to invest directly under this rule and Title 7 of the Official Code of Georgia; and

(b) The investment fund or trust shall not:

1. Except to the extent authorized in subparagraph (1)(a)3. of this rule, acquire or hold investments in the form of stripped or detached interest obligations;
2. Engage in the purchase or sale of interest rate futures contracts;
3. Purchase securities on margin, make short sales of securities or maintain a short position;  
or
4. Otherwise engage in futures, forwards or options transactions, except that forward commitments may be entered into for the express purpose of acquiring securities on a when-issued basis.

(c) On an aggregate basis, investments in such funds or trusts shall not exceed:

1. Thirty (30) percent of the bank's statutory capital base per fund/trust family or sponsor;  
and

2. Sixty (60) percent of the bank's statutory capital base for all funds combined.

(d) An aggregate limitation of one hundred twenty (120) percent of the bank's statutory capital base shall be allowed for all funds combined if the funds or trusts:

1. Are managed so as to maintain the fund or trust shares at a constant net asset value;

2. Are no-load; and

3. Are rated in the highest rating category by a nationally recognized rating service.

(4) Asset-Backed Securities.

A bank may purchase asset-backed securities repayable in both interest and principal which are issued under any of the following:

(a) Governmentally sponsored programs which are fully collateralized by obligations fully guaranteed as to principal and interest by a governmental entity to the same extent as direct obligations of the governmental entity which is the guarantor;

(b) Private programs which are fully collateralized by obligations fully guaranteed as to principal and interest by a governmental entity to the same extent as direct obligations of the governmental entity which is the guarantor; or

(c) Other private programs in amounts which do not exceed fifteen (15) percent of the bank's statutory capital base for each issuer, provided the issue:

1. Is in registered form;

2. Is collateralized by assets which could be owned directly by the bank; and

3. Is rated in the top three rating bands by a recognized national rating service.

(d) Aggregate investment in private program issues by all issuers shall not exceed fifty (50) percent of the bank's statutory capital base unless approved by the department.

(5) Interest-Only ("IO") Securities.

(a) Nothing contained herein shall permit the purchase of investments in the form of stripped or detached IO obligations. An exception to this rule is that securities issued under the U.S.

Treasury's Separate Trading of Registered Interest and Principal (STRIP's) program, which are offered in book entry form and which are direct obligations of the U.S. Government, as authorized by Subtitle III, Chapter 31 of Title 31 USC, may be purchased without limitation.

(b) Purchasing or trading any other type of IO securities may receive prior written approval from the department for institutions demonstrating technical expertise and policies sufficient to promote safe and sound use of such investments as part of prudent investment strategies.

(6) Futures, Forwards, Option Contracts and Interest Rate Swaps.

Futures, forwards, option contracts, interest rate swaps, and direct and indirect investments associated with any security which otherwise constitutes a permissible investment under provisions of this rule may be approved in writing by the department for banks demonstrating technical expertise and policies sufficient to promote safe and sound use of such investments as part of prudent investment strategies.

(7) Trust Preferred Securities.

Trust preferred securities, generally, may be defined as issues of cumulative preferred securities, containing characteristics of both debt and equity securities, where the issuer is normally a business trust formed by a corporate issuer. The corporate issuer issues debt to the trust in the form of deeply subordinated debentures. The securities represent undivided beneficial interests in the assets of the issuer trust, and distributions by the issuer trust are guaranteed by the corporate issuer to the extent of available funds of the issuer trust. The trust preferred securities may or may not be rated, but in any event must be scrutinized under the suitability analysis in this rule as if they were a loan being underwritten by the purchasing bank. Trust preferred securities are authorized investments for a state bank subject to the terms and conditions contained in this paragraph 7. A bank's investment in a closed or open-end investment fund, consisting of trust preferred securities, shall be subject to the terms and conditions contained in Rule 80-1-4-.01, paragraph 3 entitled "Investment Funds". A security backed by trust preferred securities shall be deemed an asset-backed security and shall be subject to the terms and conditions contained in Rule 80-1-4-.01, paragraph 4 entitled "Asset-Backed Securities".

(a) The bank's investment in each corporate issuer of trust preferred securities, that is, in each entity that controls an issuer trust (other than in a fiduciary capacity), shall not exceed fifteen (15) percent of the bank's statutory capital base.

(b) The bank's aggregate investment in trust preferred securities shall not exceed the bank's policy limits or one hundred (100) percent of the bank's statutory capital base, whichever is less.

(c) The issuance of the trust preferred securities shall be registered under the Securities Act of 1933, as amended, shall be eligible for resale pursuant to Securities and Exchange Commission Rule 144A, or the securities shall be capable of being sold with reasonable promptness at a price which corresponds to their fair value. As to this requirement, if an

issuance is not registered, eligible for resale, or readily marketable, it must meet a suitability analysis test as provided in (e) of this rule;

(d) The securities shall be of investment quality or the credit equivalent of investment quality. Credit equivalency shall be determined by the methods in subparagraph (e) of this rule. Investment quality means that a rating in one of the four highest categories has been assigned to the securities by a nationally recognized rating service and, as such, are not predominantly speculative in nature;

(e) Before the purchase of any trust preferred securities, the investing bank shall perform a due diligence suitability analysis to determine whether the trust preferred securities are suitable for purchase relative to the bank's tolerance for credit risk, asset liability position, sensitivity to market risk, and its liquidity exposure. Such analysis shall include, at a minimum, the following:

1. A complete credit analysis, including cash flow projections, sufficient to determine that the issuer is creditworthy and thus has the ability to meet the debt repayment schedule;

2. A credit underwriting analysis sufficient to determine that the securities meet the credit underwriting criteria set forth by the bank's lending policies;

3. A marketability analysis, sufficient to determine whether or not the securities may be sold with reasonable promptness at a price corresponding to their fair value;

4. The documentation of the suitability analysis shall be in written form and maintained in the bank's files;

5. A periodic update of the suitability analysis shall be performed by the bank at least as frequently as annually during the term of the investment; and

(f) The bank shall obtain and monitor the securities' market values on an ongoing basis.

(g) The bank's written policies and procedures shall adequately address the various risks inherent in these securities including credit risk, price or market risk, interest rate risk, and liquidity risk.

(h) The bank shall notify the department in writing of any investment in trust preferred securities where the issuer is not a bank or bank holding company as defined in Code Section 7-1-605.

(8) All Other Securities.

A bank may invest in such other securities or funds as the department may approve, upon a finding that the securities are marketable under ordinary circumstances, with reasonable promptness at a price which corresponds to their fair value, approval shall be in writing and subject to such limitations as the department may specify. This requirement for departmental approval shall not apply where the statutory capital base of the purchasing bank exceeds

\$20,000,000. However, in such instances, such securities may be purchased only in an amount which does not exceed fifteen (15) percent of the bank's statutory capital base.

Authority O.C.G.A. § 7-1-61.

#### **80-1-4-.02 Securities Underwriting.**

(1) A bank with a statutory capital base of less than \$20,000,000:

(a) Shall not underwrite or otherwise participate as principal in the marketing of securities except to the extent authorized by law or regulation and except for the account of and upon specific instructions from its customer.

(b) Such bank may, with the permission of the department, underwrite or otherwise participate in the marketing of obligations (including limited obligation bonds, revenue bonds, and obligations that satisfy the requirements of Section 142(b)(1) of the Internal Revenue Code of 1986) issued by or on behalf of any state or political subdivision of a state, including any municipal corporate instrumentality of one or more states, or any public agency or authority of any state or political subdivision of a state ("certain municipal bonds").

(2) A bank with a statutory capital base of \$20,000,000 or greater:

(a) May underwrite or otherwise participate in the marketing of any securities which such banks could purchase for their own account, in addition to the certain municipal bonds described in subsection (1)(b); but

(b) May not underwrite open-end funds described in section (3) of Rule 80-1-4-.01.

(3) All underwriting or marketing of securities shall be subject to the following conditions:

(a) Accounting and other records of trading in such securities are maintained separate and apart from accounting and other records relating to purchases of securities for the bank's own account;

(b) The board of directors of the bank must adopt operating policies which are reviewed at least annually regarding the types and quality of securities to be traded, holding periods for securities in inventory, limitations on the amount of securities to be carried in the name of any single obligor, and guidelines relative to disposition of securities subject to adverse market changes; and

(c) Credit memoranda or prospectuses and independent audit reports covering the three (3) years immediately preceding the date of the most recent underwriting are maintained.

(4) Underwriting and marketing of securities are activities also subject to federal law and regulation.

Authority Ga. L. 1974, P. 733; Ga. L. 1989, p. 1253; O.C.G.A. § 7-1-61.

#### **80-1-4-.03 Accounting and Record Keeping for Investments.**

(1) Investment securities transactions shall be accounted for in accordance with generally accepted accounting principles.

(2) Banks shall maintain documentation sufficient to identify adequately the nature of all securities owned. For all securities other than direct investment in government bonds, notes, or debentures, documentation may include annual reports, offering circulars, credit analyses published by nationally recognized rating firms, or in-house analyses, reflecting an evaluation of the degree of risk in regard to liquidity, marketability, price volatility, and eligibility for pledging.

(3) Investments in the form of “Zero Coupon” obligations shall be recorded at cost plus accretion to maturity over the life of the obligations. Legal limitations applicable to such securities shall be measured against the actual cost of the security. Provided, however, except in the case of U.S. Government issues, to the extent that the cash investment plus accretions of income earned, but not collected, exceed the legal limitation on any zero coupon security, such amount shall be set aside into a capital reserve and excluded in considering capital adequacy.

Authority Ga. L. 1974, p. 733; Ga. L. 1989, p. 1253; O.C.G.A. § 7-1-61.

#### **80-1-4-.04 Custody and Safekeeping.**

(1) Securities may be held in physical or book entry form.

(2) Physical possession of securities shall be maintained:

(a) In the vault of the investing bank;

(b) In safekeeping at any:

1. FDIC-insured, correspondent bank or trust company;

2. Federal Reserve Bank or Federal Home Loan Bank;

3. Broker-dealer insured under the Securities Investors Protection Act provided the market value of such securities does not exceed \$500,000; or

(c) As otherwise specifically approved by the department.

Authority Ga. L. 1974, p. 733; Ga. L. 1989, p. 1253; O.C.G.A. § 7-1-61.